

1 KELLY LITIGATION GROUP, INC.
2 RICHARD KELLY, ESQ. (SBN 154504)
3 MICHAEL MENGARELLI, ESQ. (215000)
4 306 Lorton Avenue
5 Burlingame, CA 94010
6 Tel: (650) 591-2282
7 Fax: (650) 591-2292

8 Attorneys for Petitioners,
9 WILLIAM MICHAEL WAGNER & JAN SONNEMAN, AND
10 RICHARD ELLISON

11
12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 In re
16 ACEH CAPITAL, LLC,
17 Debtor.

Case No.: 21-30299 DM

Chapter 7

**POINTS & AUTHORITIES IN
SUPPORT OF MOTION &
APPLICATION FOR TURNOVER
RELIEF EFFECTING INTEREST IN
REAL PROPERTY**

If No Opposition, No Hearing Necessary

**Judge: DENNIS MONTALI
U.S. Bankruptcy Judge**

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22 TO: THE COURT and ACEH CAPITAL, LLC by and through U.S. Bankruptcy
23 Trustee, E. Lynn Schoenmann and counsel Aron M. Oliner, Esq., and Geoffrey A. Heaton,
24 Esq.; and Jay D. Crom, Esq., and Eric A. Nyberg, Esq. for ACEH CAPITAL, LLC:

25 **Factual Basis**

26 The Petitioners are: WILLIAM MICHAEL WAGNER & JAN SONNEMAN, AND
27 RICHARD ELLISON, who are persons with rightful legal interests in real property located
28 in Lancaster, California, described as follows:

1 Property located at 36th STW VIC Ave. F6 in Lancaster, County of Los Angeles
2 with APN 3107-003-004 with the following legal description:

3 ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF LANCASTER, COUNTY OF LOS
4 ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

5 PARCEL 8, IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS
6 SHOWN ON RECORD OF SURVEY MAP FILED IN BOOK 66, PAGES 27 AND 28 OF RECORD OF
7 SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
8 EXCEPT THEREFROM ONE-FOURTH INTEREST IN AND TO ALL MINERALS, OIL, GAS, AND OTHER
9 HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY, AS
10 RESERVED BY WARREN O. WAGNER AND ROSE MARIE WAGNER, HUSBAND AND WIFE, BY DEED
11 RECORDED FEBRUARY 1, 1955 AS INSTRUMENT NO. 208, OFFICIAL RECORDS.

12 **APN: 3107-003-004** [the "**Property**"] [See, Dec. Kelly, Ex. A].

13 WILLIAM MICHAEL WAGNER & JAN SONNEMAN, AND RICHARD ELLISON
14 have never received any formal notices or any such notice, whatsoever or kind, that ACEH
15 CAPITAL, LLC was in bankruptcy. Through legal counsel, Mr. Kelly for Petitions was doing
16 research and found that ACEH CAPITAL, LLC was in bankruptcy and reached out to the
17 attorneys for Chen C. Wang, Victoria Wang; ACEH CAPITAL, LLC; and the U.S. Trusteeto
18 meet and confer to resolve this title issue; for which Mr. Kelly was directed to bring this
19 motion [Dec. Kelly].

20 WILLIAM MICHAEL WAGNER I.R.A. through Mid Ohio Securities is the owner of
21 45% of the Property [Dec. Wagner]. He has owned the land since 2000 [Dec. Wagner].

22 WILLIAM MICHAEL WAGNER & JAN SONNEMAN, husband and wife, own as
23 joint tenants, 30% of the Property [Dec. Wagner]. They have owned the land since 2000 [Dec.
24 Wagner].

25 RICHARD ELLISON has owned 25% in the Property going back to before 2000 [Dec.
26 Ellison].

27 In 2000, when ACEH Capital, LLC sold its 75% interests to WILLIAM MICHAEL
28 WAGNER I.R.A. and WILLIAM MICHAEL WAGNER & JAN SONNEMAN, husband and
wife, respectively, ACEH Capital LLC through its related business ACE Capital Group, wrote
to RICHARD ELLISON admitting an 'error' and 'mistake' with regard to his 25% in the Los
Angeles County Records [Dec. Ellison; Ex. 1]. The steps for ACEH Capital LLC to put title
back in the name of RICHARD ELLISON have never occurred [Dec. Ellison].

In November 2002, ACEH Capital wrote to WILLIAM MICHAEL WAGNER with
copy to RICHARD ELLISON denoting "As you know ACEH Capital is no longer a co-owner

1 on the referenced parcel of land of which you are the majority interest holder.” [Dec. Wagner,
2 Ex 1].

3 In 2019, Attorney for Petitioners, Richard M. Kelly, sought to contact ACEH Capital,
4 LLC to correct the title issues on the Property. [Dec. Kelly]. Mr. Kelly had cursory phone
5 conversations with principal Victoria Wang and manager Oscar Alvarez, with some limited
6 e-mail exchanges, but they discontinued answering Mr. Kelly’s inquiries in 2020, shortly after
7 Covid19 began. [Dec. Kelly].

8 In June, 2021, Mr. Kelly obtained a Title Report on the Property. The information from
9 the Title Report denoted in relevant part “William Michael Wagner IRA, as to an undivided
10 45% interest and William Michael Wagner and Jan Sonneman, husband and wife as joint
11 tenants, as to an undivided 30% interest and ACEH Capital, LLC, a limited liability
Company, as to an undivided 25% interest”. [Dec. Kelly Ex. A, p 4].

12 Mr. Kelly has additionally found out that there is a State of California ‘Cease and
13 Refrain’ Order from the Department of Real Estate and that this Chapter 7 matter exists. [Dec.
14 Kelly]. In speaking with U.S. Trustee Schoenmann’s counsel, Aron M. Oliner, and conferring
15 by e-mails to resolve this problem of ACEH Capital, LLC showing an interest it does not
16 own, Mr. Oliner has affirmed “Trustee [is] telling us this is not a property where ACEH holds
17 any interest” and “You can state the Trustee does not oppose the relief requested.” [Dec.
18 Kelly, Ex. B]. Mr. Kelly tried but was unsuccessful in his meet and confer efforts to proceed
19 in this matter by way of Stipulation and Order. As such, this moving matter was
20 necessary.[Dec Kelly].

21 Legal Basis

22 Petitions are identifying property which is not part of the Debtor Estate and is
23 acknowledged by the trustee that it is not part of the estate but public records show Debtor’s
24 name; as such it is sought that such erroneous identification of the Debtor be turned over to
25 the rightful owners as required by the Bankruptcy Code. 11 U.S.C. §§ 521(a)(4), 542(a),
523(b)(1).

26 The scope of the bankruptcy courts’ equitable powers is not a new question. Rather, it
27 dates back to the inception of the Union and how the U.S. Constitution allocates jurisdiction
28 to federal courts and power to Congress “[t]o establish ... uniform Laws on the subject of

1 Bankruptcies throughout the United States” [U.S. Const. art. I, § 8, cl. 4.] It generally
2 flows from the powers vested in the English Court of Chancery, the notion that the law does
3 not always provide an adequate or sufficiently determinant remedy, and the policies underlying
4 federal bankruptcy law.

5 The Supreme Court consistently described the equitable powers of the federal courts
6 as akin to those vested in the English Court of Chancery and upheld a wide array of lower
7 court decisions based in equity [See, *Sheffield Furnace Co. v. Witherow*, 149 U.S. 574, 578,
8 579 (1893) (holding that a federal court could entertain a bill in equity to enforce a mechanic’s
9 lien)].

10 Congress did not craft the Bankruptcy Code on a clean slate, but against the backdrop
11 of the Bankruptcy Act of 1898 and the exercise of equitable power in insolvency cases prior
12 to that time. [See, see *Field v. Mans*, 516 U.S. 59, 69–70, 116 S.Ct. 437, 133 L.Ed.2d 351
13 (1995) (applying equity principle to the Bankruptcy Code)].

14 By section 2 of the Bankruptcy Act (U.S.C. title 11, s 11, 11 USCA s 11), courts of
15 bankruptcy are invested ‘with such jurisdiction at law and in equity as will enable them to
16 exercise original jurisdiction in bankruptcy proceedings.’ [See, *Cont’l Illinois Nat. Bank &*
Tr. Co. of Chicago v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 675 (1935)].

17 **Petitioner’s Application for Turn Over Relief**

18 Equity regards that to be done which ought to be done [Axiom of Chancery England].
19 ACEH Capital, LLC has, literally, in writing since 2001, 2002 and by its counsel
20 through the Trustee, admitted there is a mistake, error and that “...ACEH Capital is no longer
21 a co-owner on the referenced parcel of land...”.

22 Petitioner’s simply seek to quiet title with an order denoting the following true facts:

- 23 a. Richard Ellison is the owner of an undivided 25% interest in the Property and that
24 Debtor ACEH Capital, LLC does not own any interest in the Property; and,
- 25 b. The court shall order that the Property located at 36th STW VIC Ave. F6 in Lancaster,
26 County of Los Angeles with APN 3107-003-004, that the error denoting Debtor ACEH
27 Capital, LLC as 25% interest holder is in error and is corrected to reflect that Richard
28 Ellison is the owner of an undivided 25% interest.

1 This is a 'reverse' turnover, if you will. Meaning the Debtor acknowledges its name
2 is on something it does not own; and, the Petitioners seek an Order reflecting title turned over
3 to owner RICHARD ELLISON.

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7 Dated: September 23, 2021

Kelly Litigation Group, Inc.

By: /s/ Richard M. Kelly

10 _____
11 RICHARD KELLY, Esq.
12 Attorney for Petitioners
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